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Testimony of Attorney Steven B. Kaplan  
Legal Counsel to the Connecticut Subcontractors Association  
**Senate Bill 785, An Act Concerning Construction Change Orders**  
General Law Committee  
February 11, 2009

My name is Steve Kaplan. I am a partner with Hartford law firm of Michelson, Kane, Royster & Barger PC in Hartford, where I have concentrated in the area of construction law for 27 years. I routinely represent contractors, subcontractors, construction managers and owners in virtually all matters involving contracts for public and private construction. I am Legal Counsel to the Connecticut Subcontractors Association, as well as Vice-chairman and a founding member of the Executive Committee of the Construction Law Section of the Connecticut Bar Association.

The Connecticut Subcontractors Association supports Senate Bill 785, An Act Concerning Construction Change Orders. The CSA thanks this committee for raising the bill. The proposed legislation would amend Conn. Gen. Stat. §42-158j (private construction) and §49-41a (major public construction, but excluding CDOT projects.) The amending language for both statutes is virtually identical.

Senate Bill 785 addresses the critical problem of procuring payment for a contractor or subcontractor who has performed **authorized** extra work, but cannot get paid for that work through no fault of his own because a "change order" has not been issued. The bill establishes a 5% threshold on the amount of authorized change directive work that can be imposed upon a contractor, or a subcontractor, without processing change orders for that work that can be billed and paid. When that 5% threshold is reached, the contractor or subcontractor does not have to perform **additional extra** work under new change directives until the current, pending change directives are processed as approved, billable change orders.

The bill covers only **pending** change directives; it does NOT apply to approved change orders or to original contract work. The bill does NOT apply to **DISPUTED** work. The 5% threshold also tracks the current change order limits for state funding required on public school construction projects. Per Conn. Gen. Stat. §10-286(c), the State reduces its funding by 50% for change order work on school building projects that exceeds the authorized total project cost by 5%.

The bill also requires that every contractor and subcontractor include a statement with each monthly payment requisition indicating the status of all pending and approved change

orders and change directives. This provides a necessary method for all parties—the owner, the contractor, and the subcontractors—to track the status of change orders and change directives.

Senate Bill No. 785 should be approved because:

- **Typical contract provisions, and the current law, forces contractors and subcontractors to perform authorized extra work without any means of getting paid when a change order has not been issued—“through no fault of their own.”**
- **The bill will force all parties to address in a timely fashion problems arising from unprocessed change orders.**
- **The bill would prevent owners from imposing unlimited, authorized extra work directives upon contractors and subcontractors without also addressing payment for that work.**
- **Contractors and subcontractors would no longer be forced to finance the performance of excessive, authorized extra work for unlimited time periods.**
- **Owners and contractors would be required to properly manage projects involving significant, authorized extra work, rather than ignore paying for this work at the expense of the subcontractors who perform the work.**

Again, thanks to the General Law Committee for considering this important legislation.